

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

## UNITED STATES DISTRICT COURT

for the

District of New Mexico



Division

John C DePaoli

Case No. 23cv438-KRS

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Marco P. Serna  
Dorrie Biaginti-Smith  
Alan Kirk  
Elizabeth Allen

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Jury Trial: (check one) ☐ Yes ☐ No

## COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

## NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO  
MAY 19 2023  
MITCHELL R. ELFERS  
CLERK

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	John C. DePaoli		
Address	4 Angelina Ct.		
	Moriarty	NM	87035
	City	State	Zip Code
County	Torrance		
Telephone Number	(505) 500-7937		
E-Mail Address	b.zerker@live.com		

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

## Defendant No. 1

Name	Marco P. Serna		
Job or Title <i>(if known)</i>	District Attorney, Los Alamos County		
Address	475 20th St. Ste A		
	Los Alamos	NM	87544
	City	State	Zip Code
County	Los Alamos		
Telephone Number	(505) 662-1430		
E-Mail Address <i>(if known)</i>			

☒ Individual capacity ☐ Official capacity

## Defendant No. 2

Name	Dorrie Biaginti-Smith		
Job or Title <i>(if known)</i>	Prosecutor		
Address	1322 Paseo De Peralta		
	Santa Fe	NM	87501
	City	State	Zip Code
County	Santa Fe		
Telephone Number	(505) 983-9301		
E-Mail Address <i>(if known)</i>			

☒ Individual capacity ☐ Official capacity

## Defendant No. 3

Name Alan Kirk  
 Job or Title *(if known)* Former Los Alamos County Municipal Court Judge  
 Address Unknown  
 Los Alamos NM 87544  
*City State Zip Code*  
 County Los Alamos  
 Telephone Number Unknown  
 E-Mail Address *(if known)* Unknown

☒ Individual capacity ☐ Official capacity

## Defendant No. 4

Name Elizabeth K. Allen  
 Job or Title *(if known)* Present Los Alamos County Municipal Court Judge  
 Address 1000 Central Ave.  
 Los Alamos NM 87544  
*City State Zip Code*  
 County Los Alamos  
 Telephone Number (505) 662-8025  
 E-Mail Address *(if known)* municourt@lacnm.us

☒ Individual capacity ☐ Official capacity

## II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply)*:

- ☐ Federal officials (a *Bivens* claim)  
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials? Title 18, USC, Sec. 242 - Deprivation of rights secured by the U.S. (and New Mexico) Constitution under the color of law. I was denied lawful 'Due Process of Law' in violation of my Fifth and Fourteenth Amendment rights and unlawfully convicted and punished for a misdemeanor "Criminal Complaint".

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

Section B: Defendants contd:

Defendant #5

Monica Montano-Schweiner  
Los Alamos County Probation Officer  
1000 Central Ave,  
Los Alamos, NM 87544  
(505) 662-8025  
email: unknown  
Individual Capacity

Defendant #6

Mathew Early (I believe)  
Los Alamos County Assistant Probation Officer  
1000 Central Ave.  
Los Alamos, NM 87544  
(505) 662-8025  
email: unknown  
Individual Capacity

Defendant #7

City & County of Los Alamos  
See: Owen v City of Independence, 445 US 622  
"Held: A municipality has no immunity under Section 1983 flowing from its constitutional violations, and may not assert the good faith of its officers as a defense to such liability."

Defendant #8

T. Glenn Ellington  
First Judicial District Court Judge  
225 Montezuma Ave.  
Santa Fe, NM 87501  
(505) 455-8250  
email: unknown  
Individual Capacity  
See: Hafer v Melo, 502 US 21; Maine v Thiboutot, 448 US 1; Scheuer v Rhodes, 416 US 232.  
"We hold that state officials, sued in their individual capacities, are 'persons' within the meaning of Section 1983. The Eleventh Amendment does not bar such suits, nor are state officers absolutely immune from personal liability under Section 1983 solely by virtue of the 'official' nature of their acts."

Defendant #9

Boglarka Fohgi  
Public Defender  
Address: unknown  
Phone: unknown  
email: unknown  
Individual Capacity

Defendant #10

City & County of Santa Fe  
See: Owen v City of Independence, 445 US 622  
"Held: A municipality has no immunity under Section 1983 flowing from its constitutional violations, and may not assert the good faith of its officers as a defense to such liability."

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.
- "Due Process of Law" is defined by Black's Law Dictionary, Ed. 6, (P. 500) as: "A course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such a proceeding any validity, there must be a tribunal competent by its constitution--that is by the law of its creation--to pass upon the subject-matter of the suit;...". The tribunals that convicted me were NOT "... competent by its constitution ..." and did NOT protect my "private rights" for the following reasons:

### III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?
- 1) Los Alamos County Justice Center, 1000 Central Ave., Los Alamos, NM 87544
  - 2) First Judicial District Court, 225 Montezuma Ave., Santa Fe, NM 87501
- B. What date and approximate time did the events giving rise to your claim(s) occur?
- Began September or October, 2018
- Ended: June, 2020
- C. What are the facts underlying your claim(s)? (For example: *What happened to you? Who did what? Was anyone else involved? Who else saw what happened?*)
- As explained in section II, D, I was denied my right of lawful "due process of law" and thereby unlawfully convicted and punished by tribunals that operated under the color of law.

## Section D:

"Due Process of Law" is defined by Black's Law Dictionary, Ed. 6, (P. 500) as: "A course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such a proceeding any validity, there must be a tribunal competent by its constitution--that is by the law of its creation--to pass upon the subject-matter of the suit;...". The tribunals that convicted me were NOT "... competent by its constitution..." and did NOT protect my "private rights" for the following reasons:

1) The undamaged (by me) State of New Mexico, or a subdivision thereof (its inferior judiciary), adjudicated and punished me without lawful "Jurisdiction" in its 'Case' against me, despite my questioning said "Jurisdiction". Article III, Section 2, Paragraph 2, of the U.S. Constitution dictates to the courts that: "In all Cases... in which a State shall be Party, the supreme Court shall have original Jurisdiction." "original Jurisdiction" is defined: "Jurisdiction to consider a case in the first instance. Jurisdiction of court to take cognizance of a case at its inception, try it, and pass judgment upon the law and facts." (re: Black's Law Dictionary, Ed. 6, p. 1099). Therefore, any State statute, constitutional provision, rule, practice, etc., that cedes "original Jurisdiction" to an inferior State tribunal, when the State itself is "Party" to that 'Case', is therefore unconstitutional and thereby colorable.

2) Article II (the Bill of Rights), Section 1, of the New Mexico Constitution dictates that: "The state of New Mexico is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land." This Article binds all branches of the New Mexico government to each and every provision of "the constitution of the United States". In addition, its language elevates the law that the U.S. Constitution dictates above New Mexico's inferior and/or colorable State law. Because it is included in New Mexico's Bill of Rights, this also means that New Mexicans have the established right to positive performance, by their government, on each and every provision of the "constitution of the United States" and to hold their civil servants to that established standard.

3) Article III, Section 2, Paragraph 3, dictates that: "The trial of all Crimes..." (a misdemeanor "Criminal Complaint" in this case) "... shall be by Jury;..." Both of the trials (Los Alamos County Municipal Court and First Judicial District Court) were "bench trials" and I had no say in the matter. Any State statute, constitutional provision, rule, practice, etc., that abolishes jury trials for "Criminal Complaints" is therefore unconstitutional and thereby colorable.

4) Article VI of the U.S. Constitution dictates that: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." This binds all "Judges" to the established language of the "supreme Law" and imposes on them an affirmative duty to be on lookout for colorable statutes, etc., in the performance of their job, and to then strike down any/all colorable State statutes, constitutional provisions, rules, practices, etc. (re: 16 Am. Jur. 2d, Section 155).

1, 2, 3 & 4 prove that I was unlawfully adjudicated, convicted and punished by a judiciary and officers of the court that used colorable State statutes, constitutional provisions, rules, provision, practices, etc., that were "notwithstanding" and NOT "in Pursuit thereof" the mandates of the "supreme Law of the Land". They thereby denied me lawful "due process of law" in clear violation of Amendments V & XIV.

#### **IV. Injuries**

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I was stripped of my constitutionally secured liberty under the threat of force and sequestered against my will, albeit that it was a facility of my choice rather than jail, for 87 days as the result of an unlawful adjudication. I continue to be punished/stripped of my constitutionally secured right of free and unencumbered movement/travel for the fact that I refuse to abide by the conditions set forth to regain my license resulting from two unlawful adjudication.

#### **V. Relief**

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

- 1) I seek One Hundred Million (\$100,000,000.00) total - to be paid in physical Silver & Gold Coin (re: Article I, Section 10); the award to be derived from the defendants and from their municipalities (from their bonds or otherwise); award to be deposited in the institutions or securely transported to the "places" of my choice at their cost. (Those sworn to uphold and enforce the law, who either ignorantly or willfully ignore the mandates the "supreme Law of the Land" anger me and bring out the iconoclastic traits in my character. Such misconduct and malfesance has become common-place in our society and with suit, I seek to send the clear message that I'm not going take it anymore. Outlandish settlements like this will send that message.);
- 2) that all original charges and the one follow-up charge be dismissed, with prejudice, and that my conviction be expunged/quashed (I was convicted unlawfully.);
- 3) that a mandamus be issued by the court to the New Mexico Motor Vehicles Division (MVD) ordering that public entity to reinstate my license, in perpetuity (no expiration) at Los Alamos County's cost for the fact that Los Alamos County's agents deprived me/stole of my property [my license], bought and paid for [twice]. (Said license to be issued in perpetuity because I dislike dealing with bureaucrats. The right to movement/travel is a natural right that existed prior the ratification of the Constitution and licensing a natural right is unconstitutional. I only possess one for business needs and do so under duress).

If all of this is done to my satisfaction, I may be persuaded not to file criminal charges against the named defendants in this action.

**VI. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

Signature of Plaintiff

Printed Name of Plaintiff

  
John C. DePaoli

**B. For Attorneys**

Date of signing: 05-19-23

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address